

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SETH QUINTO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 10-333RAJ

ORDER

This matter comes before the court on Petitioner Seth Quinto's motion for a certificate of appealability. Dkt. # 22. For the reasons stated below, the court DENIES the motion.

The court neglected to follow Rule 11(a) of the Federal Rules Governing Section 2255 Proceedings. That rule requires the court to determine whether a certificate of appealability should issue "when it enters a final order adverse to the applicant." Although the court has discretion under Rule 11(a) to order additional briefing on that question, the court finds additional briefing unnecessary.

Both the Federal Rules of Appellate Procedure and the Ninth Circuit's rules dictate that a district court should initially decide whether a certificate should issue. *See* Fed. R. App. P. 22(b)(1) ("In a . . . 28 U.S.C. § 2255 proceeding . . . the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of

1 appealability under 28 U.S.C. § 2253(c).”); 9th Cir. Rule 22-1(a). A court may issue a  
2 certificate of appealability “only if the applicant has made a substantial showing of the  
3 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Supreme Court has  
4 elaborated that a petitioner must show that “reasonable jurists could debate whether . . .  
5 the petition should have been resolved in a different manner or that the issues presented  
6 were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529  
7 U.S. 473, 484 (2000) (internal quotations omitted). The decision to issue a certificate of  
8 appealability turns not on the court’s assessment of the applicant’s chances for success on  
9 appeal, but whether the appeal would raise material and debatable questions. *Miller-El v.*  
10 *Cockrell*, 537 U.S. 322, 342 (2003) (courts must focus on “the debatability of the  
11 underlying constitutional claim, not the resolution of that debate.”).

12 In this case, the court finds that none of the questions Mr. Quinto presented satisfy  
13 the standard for a certificate of appealability. Mr. Quinto claims that he received  
14 ineffective assistance from his trial counsel in four ways. The Report and  
15 Recommendation of the Magistrate Judge James P. Donohue, which this court adopted in  
16 its final order, explains why none of Mr. Quinto’s arguments demonstrate ineffective  
17 assistance. The court finds that reasonable jurists would not debate the resolution of  
18 these issues. The court accordingly declines to issue a certificate of appealability. The  
19 court notes, however, that petitioner is permitted to contest the denial of the certificate of  
20 appealability on appeal. Fed. R. App. P. 22(b)(1) (“If the district judge has denied the  
21 certificate, the applicant may request a circuit judge to issue it.”).

22 Dated this 24th day of March, 2011.

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26 The Honorable Richard A. Jones  
27 United States District Judge